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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sutter)

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THE PEOPLE,

Plaintiff and Respondent,

v.

ANGEL HERNANDEZ RAMOS,

Defendant and Appellant.

C062833

(Super. Ct. No.  
CRF061216)

In May 2006 defendant Angel Hernandez Ramos pled no contest to spousal abuse. (Pen. Code, § 273.5, subd. (a).) In exchange for his plea, defendant was sentenced to formal probation for three years.

In June 2009 defendant violated his probation by consuming alcohol and was sentenced to the middle term of three years in state prison for the underlying conviction. He was awarded 149 days' custody credit and 74 days' conduct credit pursuant to Penal Code section 4019 (hereafter section 4019). The court subsequently filed an amended abstract of judgment reflecting 177 days' custody credit and 88 days' conduct credit.

Defendant's sole contention on appeal is that the January 2010 amendments to section 4019 apply retroactively to his pending appeal, entitling him to additional presentence conduct credits.<sup>1</sup> We agree and shall modify the judgment accordingly.

The amendments to section 4019 apply to all appeals, including defendant's, pending as of January 25, 2010. (See *In re Estrada* (1965) 63 Cal.2d 740, 745 [amendment to statute lessening punishment for crime applies "to acts committed before its passage provided the judgment convicting the defendant of the act is not final"]; *People v. Doganiere* (1978) 86 Cal.App.3d 237; *People v. Hunter* (1977) 68 Cal.App.3d 389, 393.)

Defendant is not among the prisoners excepted from the additional accrual of credit. (§ 4019, subds. (b)(2), (c)(2); Stats. 2009, 3d Ex. Sess., ch. 28, § 50.) Thus, having served 177 days' presentence custody, he is entitled to 176 days, not 88 days, of presentence conduct credits.

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<sup>1</sup> The California Supreme Court has granted review to resolve a split in authority over whether the January 2010 amendments to section 4019 apply to pending appeals. (*People v. Brown* (2010) 182 Cal.App.4th 1354, review granted June 9, 2010, S181963 [giving retroactive effect to amendments]; accord, *People v. Pelayo* (2010) 184 Cal.App.4th 481, review granted July 21, 2010, S183552; *People v. Landon* (2010) 183 Cal.App.4th 1096, review granted June 23, 2010, S182808; *People v. House* (2010) 183 Cal.App.4th 1049, review granted June 23, 2010, S182813; contra, *People v. Hopkins* (2010) 184 Cal.App.4th 615, review granted July 28, 2010, S183724; *People v. Otubuah* (2010) 184 Cal.App.4th 422, review granted July 21, 2010, S184314; *People v. Rodriguez* (2010) 182 Cal.App.4th 535, review granted June 9, 2010, S181808.)

### DISPOSITION

The judgment is modified to reflect that defendant is entitled to 177 days' presentence custody credits and 176 days' presentence conduct credits. As so modified, the judgment is affirmed. The trial court is directed to amend the abstract of judgment to reflect this modification and to forward a copy of the amended abstract of judgment to the Department of Corrections and Rehabilitation.

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RAYE, Acting P. J.

We concur:

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ROBIE, J.

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BUTZ, J.